

### REMARKS

#### Status of the Application:

Claims 1-12 were pending in the application at the time the Office Action was mailed. Claims 1-12 were rejected under 35 U.S.C. § 103. No claims were allowed. Upon entry of this Response, no claims will have been amended or cancelled; therefore, all claims will be pending in the application.

#### Drawings

In the Office Action, the Examiner suggested providing drawings that more clearly show the endpoints of the lines that correlate an item number to the actual item, as opposed to photographs. Formal drawings are filed herewith.

#### Rejections Under 35 U.S.C. § 103 and Response Thereto:

Claims 1-4, and 8-12 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Coffee Cakes etc. ([web.archive.org/web/\\*http://www.geocities.com/red6012002/coffee\\_cakes\\_etc.html](http://web.archive.org/web/*http://www.geocities.com/red6012002/coffee_cakes_etc.html)) in view of Berry et al. (Classic Home Cooking, 1995). Claims 5-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Coffee Cakes etc. in view of Berry et al. and in further view of Wetzels Pretzels ([www.wetzels.com/experience.php](http://www.wetzels.com/experience.php)). According to the Office Action:

Coffee Cakes etc., teaches both the composition of a cinnamon bun and the composition of a pretzel. Coffee Cakes etc., further teaches the shape as disclosed in instant claim 1 for the first dough member (Figure 5) and a spiral configuration for the second dough member (Figure 3).

....

Berry et al. is relied on to teach that it has been well known to one having ordinary skill in the art to provide two different dough compositions wherein one of the dough compositions is positioned over the other dough compositions.

....

The Examiner asserts that Berry et al. is relied on to teach the concept of placing a first dough member onto a second dough member and given this teaching it would have been obvious to one having ordinary skill in the art to combine the first and second dough members of Coffee Cakes for the purpose of providing a multi-flavored food product.

. . . .

The Examiner further asserts that Wetzel's Pretzels is relied on to teach a cinnamon bun composition in a shape other than that of a cinnamon bun.

. . . .

The Examiner further asserts that whether the second dough member had a spiral shape or any other shape would not have provided additional functionality to the food product and as a result is considered an aesthetic design change (See MPEP 2144.04 I). Additionally, the arrangement of the spiral shaped dough member would also have not imparted patentability to the food product since, its location on the first dough member would also have been a matter of ornamentation . . . .Furthermore, regarding the plurality of openings in the first dough member, the Examiner asserts that the food product combination as claimed could not have a first dough member comprising a plurality of openings since a second, third, and fourth spiral shaped dough members are placed into the openings. Therefore, the first dough member of the food product combination would not have any openings when the product is considered as a whole. . . .Therefore, this provides further indication that the physical placement of the second dough member would not have provided a patentable feature over the prior art.

Applicants assert that the Office Action fails to make out a *prima facie* case of obviousness because (1) the prior art does not teach or suggest all the claim limitations and (2) the teaching or suggestion to make the claimed combination is not found in the prior art.<sup>1</sup>

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<sup>1</sup> "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

Claim 1 (from which claims 2-9 depend), claim 10, and claim 11 (from which claim 12 depends) all recite: "a first elongated dough member having a first preselected composition and formed to have a plurality of open spaces within said first elongated dough member . . . a second elongated dough member having a second preselected composition and formed into a spiral configuration and positioned within a first of said plurality of open spaces of said first elongated dough member . . . ."

With regard to the teaching or suggestion of all the claim limitations, the Office Action asserts "Coffee Cakes etc., teaches both the composition of a cinnamon bun and the composition of a pretzel" and "Berry et al. . . . teach[es] . . . two different dough compositions wherein one of the dough compositions is positioned over the other dough compositions." However, Coffee Cakes etc. teaches only the composition of a cinnamon bun and the configuration, not composition, of a pretzel (among other configurations). The Examiner acknowledged in his non-final Office Action mailed on October 11, 2006 that "Coffee Cakes etc. discloses a first elongated dough member formed into a pretzel configuration . . . .Coffee Cakes etc. further discloses a second elongated dough member formed into a spiral configuration . . . both fi[r]st and second elongated dough member **having the same composition**, since it is taught to flavor the dough for making a cinnamon roll." Non-final Office Action p. 6. Applicants point the Examiner to the text of Coffee Cakes etc. which only mentions danish and sweet dough, and teaches that you can use either danish or sweet dough (see text directly above images #1 and #2); *nowhere* in this reference is there any mention of a food product having two different dough compositions. How then, can Coffee Cakes etc. possibly teach "both the composition of a cinnamon bun and the composition of a pretzel" as alleged by the Examiner (page 4 of the Office Action)? Additionally, Berry et al. teaches only the placement of a second dough composition on top a first dough composition in the shape of a bun, having no open spaces. It does not teach positioning a second dough composition within the open spaces of a first.

Claims 5-7 are dependent claims in which one or both ends of the first elongated dough member is formed into a second, third, and/or fourth dough member positioned in said plurality

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reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. " MPEP § 2143, at p. 2100-126.

of openings. Although the Examiner is correct in that "Wetzel's Pretzels . . . teach[es] a cinnamon bun composition in a shape other than that of a cinnamon bun," Wetzel's Pretzels is concerned only with the shape of a single dough member with the composition of a cinnamon bun in the configuration of a pretzel. It does not teach the configuration of extending either end of its dough member to create any other dough member positioned within the plurality of openings of the pretzel configuration.

With regard to the teaching or suggestion to make the claimed combination, the Office Action asserts "it would have been obvious to one having ordinary skill in the art to combine the first and second dough members of Coffee Cakes" because Berry et al. teaches the concept of placing a first dough member onto a second dough member. However, as previously discussed, Berry et al. teaches the placement of a first dough member onto a second dough member, not positioning a second dough member within the open spaces of a first dough member. On top of and within the spaces are two distinct arrangements. "The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims . . . is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of [Applicant's] specification, to make the necessary changes in the reference device."<sup>2</sup> Berry et al. only provides motivation to place one dough composition on top of another. There is no motivation or reason in the prior art to rearrange Coffee Cakes etc. or Berry et al. to form the claimed invention; and "[i]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious."<sup>3</sup>

Furthermore, the Examiner's assertion that the shape and physical placement of the second dough member is merely a matter of ornamentation which does not provide a patentable distinction over prior art is incorrect. Although in some cases the shape of a product may not have patentable significance, where it results in a product which is distinct from the reference product, the particular shape serves an important function.<sup>4</sup> In the instant application, the spiral

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<sup>2</sup> MPEP § 2144.04, at p. 2100-139 (citing *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

<sup>3</sup> *In re Vaack*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

<sup>4</sup> See MPEP § 2144.04, at p. 2100-136 (citing *Ex parte Hilton*, 148 U.S.P.Q. 356 (Bd. App. 1965)).

shape of the second dough member and its positioning within the plurality of open spaces of the first dough member results in a distinct food product which combines the taste composition and configuration of both a pretzel and a cinnamon bun.

Regarding the Examiner's statement that the recited openings in the first dough member would be closed by the positioning of the second, third, and fourth dough members, Applicants believe the claims are clear in reciting that the first dough member will be combined with additional dough members by placement of the additional dough members within the plurality of open spaces of the first dough member. Thus, the claimed combination does contemplate the closing of one or more of the plurality of open spaces in the first dough member. The specification provides support for this language.

In view of the foregoing, each of the claims 1-12 is patentable over the combination of the Coffee Cakes etc., Berry et al., and Wetzel's Pretzels references. Accordingly, withdrawal of these rejections is respectfully requested.

### **CONCLUSION**

Entry of this Response would not raise additional substantive issues; no claims will have been amended herein. Accordingly, entry of the Response and reconsideration and allowance of the claims is respectfully requested.

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment of fees under 37 CFR 1.16 or 1.17 as required by this paper to Deposit Account No. 50-0951.


The examiner is cordially invited to call the undersigned if clarification is needed on any matter within this response, or if the examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

In re Application of: Schreider  
Confirmation No: 4579  
Application No.: 10/623,489  
Examiner: THAKUR, V.A.  
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Date: 8/13/07

Docket No. 207-867

Respectfully submitted,  
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